

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTE DIVISION

<div>LINDA COMBIS; and MARY COMBIS, Individually and as beneficiaries of the Revocable Trust Agreement of Chris Combis, <div>Plaintiffs,</div> Vs. GEORGE C. COMBIS; and DIANE COMBIS, individually and as Trustee of the Revocable Trust Agreement of Chris Combis, <div>Defendants,</div></div>	<div>Civil Action No. 3:13-cv-335</div> <div>ORDER REMANDING CASE TO STATE COURT AND AWARD OF JUST COSTS TO PLAINTIFF</div>
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THIS MATTER is before the Court on Plaintiffs’ Motion to Remand and for Just Costs filed June 11, 2013.

Defendants, having conferred with Plaintiffs’ counsel, agree that remand of this matter is proper, and therefore, consent to Plaintiffs’ Motion to Remand.

The Plaintiffs also request an award of costs and attorney’s fees pursuant to 28 U.S.C. §1447(c), which provides that “[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.” The Defendants have not addressed that request. The Supreme Court of the United States has interpreted this statute to allow the award of just costs and any actual expense, including attorney fees, when the removing party lacks an “objectively reasonable basis for removal.” *Martin v. Franklin Capitol Corp.* 546 U.S. 132 (2005).

On its face, 28 U.S.C. § 1441(b) precludes removal in this case. Defendants admitted their residence was in North Carolina from the time of their Answer, which was filed on December 11, 2012. No exceptions or unusual circumstances have been raised by the Defendants to the plain meaning of the “forum defendant rule” that would otherwise result in a legal conclusion other than the preclusion of removal on the basis of diversity of citizenship under the 28 U.S.C. § 1441(b). These are rudimentary procedural concepts, and the misguided attempt at removal only delayed the resolution of the merits of the case and increased the expenses of the litigants. The Court concludes, therefore, that an award of costs is appropriate.

THEREFORE, IT IS HEREBY ORDERED:

1. That this matter be remanded to the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina.
2. That the Plaintiffs costs and attorney fees in the amount of \$2,286.00 be paid by the Defendants.

IT IS SO ORDERED.

Signed: July 26, 2013



Graham C. Mullen
United States District Judge

